



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2019

Ms. Karen Strand
Senior Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2019-30379

Dear Ms. Strand:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 793435.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident.¹ You state you released some information to the requestor. You state the department will redact originating addresses and telephone numbers of 9-1-1 callers pursuant to Open Records Letter Nos. 2011-15761 (2011) and 2011-15075 (2011), and public citizens' dates of birth pursuant to Open Records Letter No. 2015-24970 (2015).² You claim portions of the submitted information are excepted from

¹ You inform us the department provided the requestor with a cost estimate of charges pursuant to section 552.2615 of the Government Code on August 13, 2019, which required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See* Gov't Code §§ 552.2615, .263(a). You inform us that, in response to the cost estimate, the requestor modified the request, which was received by the department on August 14, 2019. *See id.* §§ 552.222(b) (governmental body may communicate with requestor to clarify or narrow request), .2615 (requestor may modify request in response to estimate of charges); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). Thus, August, 14, 2019, is the date on which the department is deemed to have received the request.

² Open Records Letter Nos. 2011-15761 and 2011-15075 authorize the department to withhold the originating addresses and telephone numbers, respectively, of 9-1-1 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code without requesting

disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, the doctrine of common-law privacy protects the privacy interests of individuals, not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990).

Upon review, we find some of the submitted information may satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. To the extent the information you indicated on the video recording at issue pertains to an individual and not a business, the department must withhold the insurance information you indicated under section 552.101 in conjunction with common-law privacy. Conversely, to the extent the information you indicated on the video recording pertains to a business and not an individual, the department may not withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. The department states the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

a decision. Open Records Letter No. 2015-24970 authorizes the department to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state some of the submitted photographs depict police officers. You do not inform us the police officers depicted in the photographs at issue have provided the department with written consent regarding the release of the photographs. You indicate none of the remaining exceptions under section 143.090 are applicable. Therefore, the department must withhold the submitted photographs of police officers, which you have indicated, under section 552.101 in conjunction with section 143.090.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to motor vehicle record information pertaining to the requestor's client and this information may not be withheld from this requestor under section 552.130 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department must withhold the information you marked and indicated, as well as the additional photographs we indicated that include license plates and registration stickers, that do not belong to the requestor's client in the remaining video recordings and photographs under section 552.130.

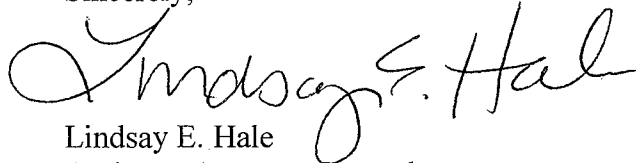
Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number you indicated under section 552.136.

In summary, to the extent the information you indicated on the video recording at issue pertains to an individual and not a business, the department must withhold the insurance information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the submitted photographs of police officers you have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The department must withhold the information you marked and indicated, as well as the additional photographs we indicated that include license plates and registration stickers, that do not belong to the requestor's client in the remaining video recordings and photographs under section 552.130 of the Government Code. The department must withhold the insurance policy number you indicated under section 552.136 of the Government Code. The remaining information must be released.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LH/eb

Ref: ID# 792920

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a right of access beyond that of the general public to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4.